

REMARKS

Introduction:

Claims 1, 2, 4-9, 11-13, 15-20 and 22-42 are pending in the present application. Applicant is amending herewith Claims 12, 22-25, 28-29 and 34-35; applicant is canceling herewith Claim 11. Support for these amendments is found generally throughout the application. Applicant submits that entry of the requested amendments is proper because they do not introduce new matter and they place the claims in condition for allowance. Applicant is also adding hereto new dependent Claims 43-48. Following entry of the amendments requested herein, Claims 1, 2, 4-9, 12-13, 15-20 and 22-48 will be pending in this application and will be subject to further examination. Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and the following remarks.

The Office Action:

Claims 1, 2, 4-9, 11-13, 15-20 and 22-42 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting in view of Claims 1-32 of copending Application Serial No. 10/338,796. Claims 11, 23-25, 28, 29, 35 and 37-39 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 11, 23-25, 28, 29, 35 and 37-39 were rejected under 35 U.S.C. §112, first paragraph, a failing to comply with the enablement requirement. Claims 23, 24, 37 and 38 were rejected under 35 U.S.C. §112, first paragraph, a failing to comply with the written description requirement. Applicants respectfully traverse the foregoing rejections.

The Double Patenting Rejection:

Claims 1, 2, 4-9, 11-13, 15-20 and 22-42 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting in view of Claims 1-32 of co-pending Application Serial No. 10/338,796. Since this is a provisional rejection, applicant submits that no response is due at this time. However, applicant disagrees with the examiner that the allegedly conflicting claims are not patentably distinct.

All claims of co-pending Application Serial No. 10/338,796 require that the composition is substantially free of another catalyst or catalyst system for forming polyurethane. In applicant's previous response, it was argued that this feature distinguished the present application from the co-pending application. In the present Office Action, it is pointed out that Claims 22-25 of the present application do not require a catalyst. However, applicant is amending herewith Claims 22-25, so that those claims require the presence of a catalyst. Therefore, all claims of the present application require the presence of a catalyst.

The Office Action also states that the present specification teaches that the glass cullet has catalytic properties. However, there is no disclosure in the present application that the catalytic properties of glass cullet are sufficient to form polyurethane in the absence of a conventional catalyst. Therefore, the claims of the co-pending application that require the composition to be substantially free of another catalyst or catalyst system for forming polyurethane are clearly patentably distinct from the claims of the present application which require a catalyst. Accordingly, a rejection of the present application or the co-pending application based on obviousness-type double patenting would be improper.

Rejection Under 35 U.S.C. § 112:

Claims 11, 23-25, 28, 29, 35 and 37-39 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Office Action objects to the use of the term “in such amount” in the claims. Claims 11, 23-25, 28, 29, 35 and 37-39 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Again, the Office Action objects to the term “in such amount.”

Applicant is amending herewith Claims 23-25, 28 and 29 to provide that the glass cullet comprises approximately 5 to 95 weight percent of a polyurethane composition. Applicant is voluntarily canceling herewith Claim 11 for reasons unrelated to the present rejection. Applicant submits that these amendments overcome the present rejections. Accordingly, applicant respectfully requests withdrawal of the rejection of Claims 23-25, 28, 29, 35 under 35 U.S.C. §112.

Claims 23, 24, 37 and 38 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Office Action states that support has not been found for the amendments pertaining to the claimed conditions. However, the Office Action does not state specifically what conditions are objected to.

In Claim 23, it is stated that the glass cullet has an average particle size such that said polyurethane composition has a reactivity of greater than 5 minutes at 25°C. and atmospheric pressure. Support for this limitation may be found at page 12, lines 12-15; page 13, lines 1-11 and page 15, lines 2-3. As shown at page 12, lines 12-15, the reactivity should be longer than 5 minutes. As further shown at page 13, lines 1-11, the reactivity is the time it takes the polyurethane to reach the desired viscosity; e.g., 18,000 cps at 25°C. There is no specific disclosure that these measurements are made at atmospheric pressure. However, as shown at

page 15, lines 2-3, reactivity is measured using a thermometer and a Brookfield viscometer, Model DV-II. The specification does not disclose the use of any pressure container. Furthermore, it is well known in the art that a Brookfield viscometer, Model DV-II measures viscosity at atmospheric pressure. However, in order to advance prosecution of this application, applicant is deleting the term "atmospheric pressure" from Claim 23.

In Claim 24, it is stated that the glass cullet has an average particle size such that said polyurethane composition has a cure time of "less than 130 seconds at 275°F. and atmospheric pressure." Support for this limitation may be found at page 12, lines 12-15; and page 14, line 16 to page 15, line 2. There is no specific disclosure that these measurements are made at atmospheric pressure. However, the specification does not disclose the use of any pressure container. For example, page 14, line 16 to page 15, line 2 states that the cure time is measured by placing the sample in a tin container which was then placed on a hot plate set at 275°F. Applicant submits that it is obvious that this measurement is made at atmospheric pressure. However, in order to advance prosecution of this application, applicant is deleting the term "atmospheric pressure" from Claim 24.

It is submitted that the amendment of Claims 23 and 24 to remove the term "atmospheric pressure" does not narrow the scope of those claims. Therefore, there is no estoppel with respect to these claims.

It is submitted that Claims 23 and 24, as amended, comply with the written description requirement. Claims 37 and 38 are dependent claims that depend from Claims 23 and 24, respectively. Accordingly, Claims 37 and 38 also comply with the written description requirement. Therefore, applicant submits that the rejection of Claims 23, 24, 37

and 38 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement, should be withdrawn.

New Claims:

Applicant is adding hereto new dependent Claims 43-48. These claims depend from Claims 1, 12 and 22. Therefore, Claims 43-48 should be allowable on the same basis as Claims 1, 12 and 22.

Conclusion:

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and remarks. Such action is courteously solicited. Since this response is being submitted within two months of mailing date of the final Office Action, applicant requests issuance of an Advisory Action. Applicant further requests that the Examiner call the undersigned attorney if allowance of the claims can be facilitated by examiner's amendment, telephone interview or otherwise.

Respectfully submitted,

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